IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 8-8-2007

Coram

The Honourable Mr.Justice K. VENKATARAMAN

W.P.Nos.22391, 22760, 23138 & 24179 of 2007
and
Connected M.Ps.

W.P.No.22391 of 2007:

C.Somasundaram .. Petitioner

Vs.

1. The District Forest Officer,
   Coimbatore Division,
   Coimbatore-18.

2. R.Sivaraman .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the first respondent relating to the order issued in S.O.No.143/07/P1 dated 22.6.2007 and quash the same and consequently direct the first respondent to allow the petitioner to continue in the present place of work, namely, in K.K.Chavadi check post, Coimbatore District.

For Petitioner : Mrs.Selvi George

For Respondent-1 : Mr.K.Rajasekar,
Govt. Advocate (Forest).

For Respondent-2 : Mr.B.Rajendran

...

W.P.No.22760 of 2007:

P.Ashok Kumar .. Petitioner

Vs.

1. The District Forest Officer,
   Coimbatore Division,
   Coimbatore-18.

2. Ramalingam .. Respondents

[R2 impleaded as party, as per the order of this Court in M.P.No.3 of 2007 dated 2.8.2007]

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Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records on the file of the first respondent in order No.143/07/P1 dated 22.6.2007 and quash the same and consequently, direct the respondent to permit the petitioner to peacefully continue to serve on the same present place.

For Petitioner : Mrs.T.Aananthi

For Respondent-1 : Mr.K.Rajasekar,
Govt. Advocate (for Spl G.P. (Forest)
For Respondent-2 : Mr.M.Vkvekanandan

...

W.P.No.23138 of 2007:

R.Murugasen .. Petitioner

Vs.

1. The District Forest Officer,
Vellore Division,
Vellore 632 004.

2. Thiru Ko.Manickam, I.F.S.,
District Forest Officer,
Vellore 632 004. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records on the file of the first respondent relating to S.O.No.153/2007 (Na.Ka.No.5913/2007/B1) dated 2.7.2007 and connected orders, quash the same and issue consequential directions to the respondents to permit the petitioner to continue to serve in the same post/station.

For Petitioner : Mr. M.Ravi,
For M/s.R.Prasana Devy

For Respondent No.1 : Mr.K.Rajasekar,
Govt. Advocate (Forest).

For Respondent 2: Mr. K. Challapandian.

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W.P.No.24179 of 2007:

C.Chennappan .. Petitioner

Vs.

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1. The Principal Chief Conservator of Forests,
   Panagal Buildings,
   Chennai 600 015.

2. The Conservator of Forests,
   Dharmapuri Circle,
   Dharmapuri.

3. The District Forest Officer,
   Dharmapuri

4. P.Chidambaram .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the orders in (1) Pro.Na.Ka.No.AB1/18567/2007 dated 8.6.2007 passed by the first rspondente; and (2) S.O.No.110/2007/Pa.1 (Na.Ka.No.5506/2007/Pa.1) dated 13.7.2007 passed by the third respondent, quash the same and issue consequential directions to the respondents to permit the petitioner to continue to serve in the same post/station.

For Petitioner : Mr.M.Ravi

For Respondent No.1 to 3 : Mr.K.Rajasekar, Govt. Advocate (Forest).

For Respondent-4 : Mr.P.Jayaraman, S.C. For Mr.Ellenchezhian

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O R D E R

In all these Writ Petitions, the main ground of attack is that the orders of transfer have been made in clear violation of the instructions of the Government. More particularly, the case of the petitioners in these Writ Petitions is that the impugned orders have been passed in violation of the transfer policy enunciated in the Government letter dated 5.8.1998 and G.O.Ms.No.10 P.&A.R. Department dated 7.1.1994. Further, the petitioners have expressed their personal grievances like their wards are studying in school, mother is suffering from Asthma,etc. The petitioner in one of the writ petitions has stated that he is suffering from ailment, etc. Thus, the case of the petitioners is that on the footing of the above referred personal grievances, the orders of transfers have to be set aside.

2. Per contra, the learned Government Advocate (Forest) appearing for the respondents contended that the orders

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of transfer have been passed on administrative grounds in some of the Writ Petitions and on the basis of complaint in respect of some of the Writ Petitions. Further, the learned learned Government Advocate contended that transfer is one of the service conditions and hence, the same cannot be interfered with.

3. I have heard Mr.M.Ravi, the learned counsel appearing for the petitioners in W.P.Nos.23138 & 24179 of 2007, Mrs.T.Ananthi, the learned counsel for the petitioner in W.P.No.22760 of 2007, Mrs.Selvi George, the learned counsel for the petitioner in W.P.No.22391 of 2007 and Mr.K.Rajasekar, the learned Government Advocate (Forest) appearing for the respondents.

4. Mr.M.Ravi, the learned counsel appearing for the petitioner in W.P.Nos.23138 and 24179 of 2007 has vehemently contended that in W.P.No.23138 of 2007, it has been specifically stated that the second respondent in order to accommodate some other person in the place of the petitioner has passed the impugned order with mala fide intention. Further, the learned counsel submitted that the second respondent who is the District Forest Officer has been arrayed by name. Further, he has submitted that when a specific plea has been taken stating that the order of transfer has been passed with a mala fide intention and the said Officer has been impleaded by name, the counter should have been filed by the respondents. Since no counter has been filed, it has be presumed that the petitioner has proved that the orders of transfer have been passed with a mala fide intention.

5. Further, the learned counsel submitted that the impugned order has been passed in violation of the transfer policy of the Government in their letter dated 5.8.1998 and G.O.Ms.No.10 P & A.R.(Per-S) Department dated 7.1.1994. The said Government letter dated 5.8.1998, according to the learned counsel appearing for the petitioner, prohibits an order of transfer during non transfer period and after commencement of the academic year. Further, the learned counsel appearing for the petitioners have drawn my attention to G.O.Ms.No.10 P & A.R. Department dated 7.1.1994 and submitted that as per the said G.O., a person shall be transferred only after completion of three years and further in the said G.O., it has been specifically stated that in case of subordinate service officers, who are not due for transfer from their post as per the instructions, but who are proposed to be transferred, specific and valid reasons for such transfer should be reported. By pointing out the said portion of the Government Order, the learned counsel appearing for the petitioner contended that no specific or valid reason has been assigned in the order of transfer passed against the petitioner in W.P.No.23138 of 2007.

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6. In W.P.No.22391 of 2007, Mrs.Selvi George, the learned counsel appearing for the petitioner contended that apart from the contention that the impugned order of transfer is in violation of the Rules/instructions issued by the Government; that his daughter is studying in X-Std in Government Higher Secondary School, Madukkarai, which is situated just 2 k.m. from his place of residence and that he has been transferred to a place which is more than 60 k.m. from his present place of living; and that his wife is also suffering from Asthma and hence, the order of transfer has to be set aside. Per contra, Mr.K.Rajasekar, the learned Government Advocate appearing for the respondents contended that since the second respondent has already taken charge in K.K.Chavadi Check post in the place of the petitioner, if the order of transfer is set aside, it will cause great hardship.

7. In W.P.No.22760 of 2007, Mrs.T.Aananthi, the learned counsel appearing for the petitioner, contended that apart from the contention raised regarding violation of guidelines, the petitioner is suffering from Asthma, wheezing and high blood pressure and hence, the order of transfer will cause great hardship to the petitioner.

8. In W.P.No.24179 of 2007, the case of the petitioner is that by an order dated 8.6.2007, the petitioner has been transferred from Dharmapuri Circle to Vellore Circle and subsequently, it has been kept in abeyance. Thereafter, another order of transfer has been passed by the 3rd respondent transferring the petitioner from Neruppur Section to Pennagaram Section. The same has been given effect and the petitioner has joined the said place. Later by communication dated 13.7.2007, the 4th respondent has been posted to Pennagaram Section in his place and the petitioner has been transferred to Vellore Division. Later by communication dated 30.7.2007, the 3rd respondent cancelled the order dated 13.7.2007 and the petitioner has been allowed to continue at Pennagaram. Hence, Mr.V.Ravi, the learned counsel appearing for the petitioner submitted that as far as this matter is concerned, in view of the subsequent order that has been passed on 30.7.2007 cancelling the order dated 13.7.2007 thereby allowing the petitioner to continue at Pennagaram Section, there need be any order in this Writ Petition. In view of the same, W.P.No.24179 of 2007 becomes infrucutuous and the same is liable to be dismissed.

9. I have considered the several contentions raised by the learned counsels for the writ petitioners and the learned Government Advocate (Forests) for the respondents.

10. It has been held in several judgments by the Honourable Apex Court as well as by this Court that transfer is

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an incident of service and hence, the same cannot be interfered by the Courts. Further, the Honourable Apex Court has also held that transfer could be made if it is shown inefficiency or misbehaviour on the part of the person against whom an order of transfer has been made. Furthermore, whether a person has to be transferred or not, has to be decided and determined by the employer considering the administrative necessities. The order of transfer could be interfered only when it is shown that (i) there is violation of statutory provision, or (ii) the authority who has passed the said order has no jurisdiction; or (iii) vitiated by mala fide. If such things does not prevail, the question of interfering with such order of transfer is totally outside the purview of the Court. Furthermore, the employer has to see various factors depending on administrative exigencies and at no stretch of imagination, it can be said that an employee cannot be transferred from one place to another and the employee has no right to contend that he shall not be transferred at all and he should be permitted to work in the same station. Further, the guideline that has been pointed out by the learned counsel for the petitioners has no binding effect. Thus, summing up the position regarding transfer the Courts can interfere with an order of transfer only on three grounds, namely, (a) When the order of transfer has been shown to be vitiated by mala fide; (ii) if it is in violation of statutory provision; or (iii) the same has been passed by an authority not competent to pass such order.

11. In all these Writ Petitions, it is not the case of the petitioners that there is any violation of any statutory provision. Further, it is not their case that the authority who has passed the orders of transfer is not competent to pass such orders.

12. In W.P.No.23138 of 2007, the case of the petitioner is that the impugned order has been passed by the second respondent to accommodate some other person with mala fide intention. It is useful to extract the averments made by the petitioner in the said Writ Petition. In paragraph 5 of the affidavit, the petitioner stated as follows:-

> "It is only to accommodate some other person in my place, the second respondent has passed the impugned order with mala fide intention."

13. The allegation made by the petitioner is very vague. Mere allegation of mala fide cannot be looked into at all. Furthermore, it is not the case of the petitioner that the second respondent is trying to accommodate a particular person. The affidavit reads that it is only to accommodate some other person in the place of the petitioner. Hence, I am constrained to hold that the petitioner in the said Writ Petition has not made out any case to show that the transfer order has been passed with male fide intention.

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14. It is to be further noted that the Government of Tamil Nadu by letter dated 26.8.1997 has clarified G.O.Ms.No.10, P.&.A.R. Department, dated 25.8.2007 and issued the amendment to the said G.O. which reads as follows:-

> "(3) After the end of para V, the following shall be added as para VI:-
>
> "Notwithstanding anything contained in the previous paragraphs of the G.O., the Government reserve the right to transfer any government servant at any point of time in public interest for valid and sufficient reasons to be recorded in writing."
>
> "This transfer policy should be considered as mere guidelines to the competent authorities concerned for effecting transfers and does not confer any right on the Government servants to rely on the same for retention or transfer in/from a particular place or post citing the above G.O. or its various clauses." "

The said amendment makes it very clear that the transfer policy is a mere guidelines to the competent authority while effecting transfer and it does not confer any right on the government servant to rely on the same for retention or transfer from a particular place or post citing G.O.Ms.No.10, P.& A.R. Department dated 7.1.1994.

15. Further, it has to be seen that Rule 57 of the Tamil Nadu State and Subordinate Service Rules reads as follows:-

> "Appeal or Review:-- (a) Where no specific provision for appeal or review is made in these Rules, or in the Special Rules against any order passed under the said rules for redressal of grievances, an appeal or review, as the case may be, shall lie, to the authority to which an appeal or review petition would like against an order of dismissal.
>
> (b) An appeal or review under sub-rule (a) shall be preferred within two months from the date of receipt of the orders by the appellant or the review petitioner, as the case may be.
>
> (c) Every appeal or review under sub-rules (a) shall be disposed of within four months from the date of the receipt of the appeal or review petition.
>
> (d) The appellate or reviewing authority may issue interim directions as it deems fit, pending final decision thereon in order to avoid any irreparable loss to the appellant or review

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petitioner or to avoid administrative inconvenience."

16. The said Rule make it very clear that where no specific provision for appeal or review made available under the Rules, an appeal or review could be preferred within two months for redressal of any grievances to the Authority to which an appeal or review petition would lie. If the petitioners are aggrieved by the orders of transfer, they could very well avail the said provision for filing an appeal or review before the competent authority. But, the petitioners, instead of approaching the appropriate Authority, have straight away come to this court challenging the orders of transfer.

17. In this connection, it will be useful to refer the decision of the Honourable Apex Court in UNION OF INDIA v. JANARDHAN DEBANATH (2004 (4) S.C.C. 245), wherein it has been held as follows:-

"That brings to the other question as to whether the use of the expression "undesirable" warranted an enquiry before the transfer. Strong reliance was placed by the learned counsel for the respondents on a decision of this Court in JAGDISH MITTER v. UNION OF INDIA (AIR 1964 S.C. 449) to contend that whenever there is a use of the word "undesirable" it casts a stigma and it cannot be done without holding a regular enquiry. The submission is clearly without substance. The said case relates to use of the expression "undesirable" in an order affecting the continuance in service by way of discharge. The decision has therefore no application to the facts of the present case. The manner, nature and extent of exercise to be undertaken by courts/tribunals in a case to adjudge whether it casts a stigma or constitutes one by way of punishment would also very much depend upon the consequences flowing from the order and as to whether it adversely affected any service conditions - status, service prospects financially - and the same yardstick, norms or standards cannot be applied to all categories of cases. Transfers unless they involve any such adverse impact or visit the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department

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concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration.

Additionally, it was pointed out by learned counsel for the Union of India that as indicated in the special leave petition itself there was no question of any loss of seniority or promotional prospects. These are the aspects which can be gone into in an appropriate proceeding, if at all there is any adverse order in the matter of seniority or promotion. It was also submitted that transfer was within the same circle i.e., the North-Eastern Circle and, therefore, the question of any seniority getting affected by the transfer prima facie does not arise."

18. It is also useful to refer to the decision of the Honourable Apex Court reported in 2004 (11) S.C.C. 402 (STATE OF U.P. v. GOBARDHAN LAL) wherein it has been held as follows:-

"It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments.

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> This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

19. Thus, the catena of decisions cited by the learned Government Advocate appearing for the respondents amply establish that the order of transfer could not normally be interfered by the Court unless and otherwise it is shown the three factors enumerated above. Since none of the said factors are available in these Writ petitions, I am not inclined to interfere with the orders of transfer passed by the respondent in these Writ Petitions.

20. In the result, these Writ petitions are dismissed. The connected M.Ps. are closed. No costs. It is needless to say that the dismissal of the Writ Petitions will not bar the petitioners from approaching the appropriate Authority for cancellation or stay of the orders of transfer, if they desire to do so.

dpp

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The District Forest Officer,
   Coimbatore Division,
   Coimbatore-18.

2. The District Forest Officer,
   Vellore Division,
   Vellore 632 004.

3. The Principal Chief Conservator of Forests,
   Panagal Buildings,
   Chennai 600 015.

4. The Conservator of Forests,
   Dharmapuri Circle,
   Dharmapuri.

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5. The District Forest Officer,
   Dharmapuri

+ 1 cc to Mr. G. Elanchezhiyan, Advocate SR No. 49983

+ 1 cc to Mr. M. Ravi, Advocate SR No. 49724

+ 1 cc to Mr. C. Kalaichelvan, Advocate, SR No.49903

+ 1 cc to Ms. R. Prasana Devy, Advocate, SR No.49721

+ 1 cc to Mr. M. Vivekanandan, Advocate, SR No.49887

+ 4 ccs to the Spl Government Pleader (Forests), SR Nos.49939, 49941, 49942, 49743

+ 1 cc to Mr. B. Rajendran, Advocate, SR No.49741

+ 1 cc to Mrs. Selvi George, Advocate SR No. 49888

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